

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 4660 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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HARJITSINH MILKHASINH KAKKAD - Petitioner(s)
Versus
DISTRICT MAGISTRATE & 2 - Respondent(s)

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Appearance :

MR ANIL S DAVE for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE**Date : 23/09/2005****ORAL JUDGMENT**

1.By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed for a writ of mandamus and/or writ in the nature of

mandamus or any other appropriate writ, order or direction to the respondents directing them to produce relevant papers and, orders and grounds of detention which is likely to be passed against the present petitioner and to quash and set aside the order of detention which is likely to be passed by the respondent no. 1 against the present petitioner and to be approved by the State Government - respondent no.2.

2.It appears from the record that a complaint, being C.R.No.5154 of 2004, came to be filed with Amirgadh Police Station by the complainant namely Gamanbhai Mohanbhai, Unarmed Police Constable, Badge No.1438 of Amirgadh Police Station for the offences punishable under Sections 66, b-65, a, e, 81, 116(2), 98 and 99 of the Bombay Prohibition Act since the police intercepted the truck bearing No.RJ-14-2G-5950 and seized the articles named Indian made foreign liquor containing 3588 bottles each 74- mls., amounting to Rs.10,59,600/-. It appears from the record that the driver of the truck Pruthvipalsinh and another person Satpalsinh were arrested on the spot by the Amirgadh Police and they were subsequently enlarged on bail. It also appears from the record that the petitioner was

arrested during the course of investigation of the said offence and, thereafter, the present petitioner preferred an application for bail before the Court of learned Judicial Magistrate, First Class, Palanpur, District : Banaskantha and he was enlarged on bail by the trial Court. It appears from the record that since the petitioner apprehends his arrest in connection with the aforesaid offence under Section 2(b) of the Gujarat Prevention of Anti-social Activities Act, 1985 ("the Act" for short) since the District Magistrate or the Commissioner of Police of the concerned City is empowered by Section 3(1) of the Act to invoke the jurisdiction and can also arrest and detain the person who has committed the offence under the Bombay Prohibition Act, the petitioner has preferred the present petition under Article 226 of the Constitution of India for the aforesaid relief.

3. Heard the learned advocates for the parties.

4. It is submitted by the learned advocate Mr. A. S. Dave appearing for the petitioner that the petitioner is aged about 70 years and is not connected anywhere with illegal liquor business in the State of Gujarat. He submitted that the case of the present petitioner falls within the proviso (ii) and (iii)

of para 30 of the judgment in the case of Additional Secretary to the Government of India and others Vs. Smt. Alka Subhash Gadia and another, reported in 1992 Supp. (1) SCC 496, which reads as under.:

“(ii) that it is sought to be executed against a wrong person and (iii) that it is passed for a wrong purpose.”

5.He submitted that the petitioner is apprehending his arrest and the order of detention is likely to be passed and served by respondent No.1 on the petitioner without looking to the factual aspects of the case and back-ground, character and antecedent and life style of the present petitioner. In support of his submissions, Mr.Dave has relied upon the following judgments.:

(a) Vedprakash Devkinandan Chiripal Vs. State of Gujarat and another, reported in 1987 (2) GLR 1345.

(b) Additional Secretary to the Government of India and others Vs. Smt. Alka Subhash Gadia and another, reported in 1992 Supp (1) SCC 496.

© N.K.Bapna Vs. Union of India and others, reported in (1992) 3 SCC 512.

It is, therefore, requested to allow the present petition.

6.On the other-hand Mr.Pradip Bhate, learned AGP

appearing for the respondents has opposed this petition and has tried to justify the action of the respondents. He submitted that entertaining the petition would amount to securing right to the proposed detenu to seek judicial review of the detention order even before it is executed and would also enable him thereby to pass the procedure laid down by the law to challenge it after it is executed. He further submitted that as held by the Honourable Apex Court, the courts have power to entertain grievances against any detention order prior to its execution and they have used it in proper basis although such cases have been few and the grounds on which the courts have interfered with them on pre-execution stage which necessarily have very limited in scope and number where the courts are prima facie satisfied that (i) that the impugned order is not passed under the Act under which it is purported to have been passed; (ii) that it is sought to be executed against a wrong person; (iii) that it is passed for wrong purpose; (iv) that it is passed on vague, extraneous irrelevant grounds, and (v) that the authority which passed it had no authority to do so. He, therefore, submitted that looking to the above well settled principles

enunciated in the above referred judgment, it is evidently and explicitly clear that the Court would hear such petition against the order of detention after the order is passed. Relying upon the decision in the case of Union of India and others Vs. Parasmal Rampuria, reported in (1998) 8 SCC 402, Mr.Bhate submitted that the petitioner is first required to surrender pursuant to the detention order and then raise his grievances examined on merits. Relying upon the decision in the case of Union of India and others Vs. Vidya Bagaria, reported in (2004) 5 SCC 577, Mr.Bhate also submitted that interference by this Court at pre-detention stage is not permissible except in certain circumstances. It is, therefore, requested to dismiss the present petition.

7.As can be seen from the record of the case, the present petition is filed by the petitioner under Articles 226 of the Constitution of India at pre-execution stage. This petition is filed on 14.3.2005. It is well settled by now that there is no legal bar against the entertainment of the petition at pre-execution stage, however, the Court is required to exercise the powers in such cases only in exceptional cases. In the case of The

Additional Secretary to the Government of India (supra), the Apex Court has observed therein as under.:-

“It is not correct to say that the Courts have no power to entertain the grievances against any detention order prior to its execution. The Courts have the necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the Courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the Courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds, or (v) that the authority which passed it had no authority to do so.”

8.It is, therefore, clear that the Courts have necessary power provided that the Courts are prima

facie satisfied regarding well settled principles enunciated in the above referred judgment. As can be seen from the facts of the case, the case of the petitioner is not covered by any of the aforesaid principles laid down by the Honourable Apex Court in the case of The Additional Secretary to the Government of India (supra). The contention of the learned advocate appearing for the petitioner that the case of the petitioner falls within the proviso (ii) and (iii) of para 30 of the aforesaid judgment is ill-founded. It is averred in the affidavit-in-reply at page 2 that the petitioner has shown his age as 43 years, whereas in the petition, it is stated that the petitioner is aged about 70 years. Further, in a statement before the police, the petitioner stated that he is aged about 54 years. It is also averred that the petitioner is doing the business of transport and is managing the affairs of the business. It is further averred that in the truck bearing No.RJ-14-2G-5950 which contained the liquor worth Rs.10,59,660/-, i.e. 3588 bottles of foreign liquor was intercepted by the police and as per the statements of the driver and cleaner before the police, the petitioner was transferring the foreign liquor on 19.8.2004 which was to be

delivered at Ahmedabad as per the instructions of the petitioner. It appears that the name of the petitioner is impleaded as an accused in the offence. It is also stated that the present petitioner evaded his arrest and remained absconding till today and this aspect has been supported by para 6 of the affidavit-in-reply filed by respondent no.1.

9. In view of the aforesaid aspect of the matter, I do not find any substance in the present petition and therefore, the same is required to be dismissed. The petition is accordingly dismissed. Rule is discharged. However, it will be open for the petitioner to make appropriate representation and ultimately it is for the authority concerned to decide the same in accordance with law. It is made clear that this Court has not expressed any opinion on the merit of the representation that may be made by the petitioner.

(Sharad D.Dave, J)

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